

# Exhibit 9

(Filed Under Seal)

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MINNESOTA

3  
4 FAIR ISAAC CORPORATION,

5 Plaintiff,

6 v. Court File No. 16-cv-1054 (WMW/DTS)

7 FEDERAL INSURANCE COMPANY,  
8 an Indiana corporation, and ACE  
9 AMERICAN INSURANCE COMPANY,  
10 a Pennsylvania corporation,

11 Defendants.

12 VIDEO DEPOSITION

13 The following is the video deposition of  
14 JANDEEN BOONE, taken before Jean F. Soule, Notary  
15 Public, Registered Professional Reporter, pursuant  
16 to Notice of Taking Deposition, at the law office  
17 of Merchant & Gould, 3200 IDS Center, 80 South  
18 Eighth Street, Conference Room 32H, Minneapolis,  
19 Minnesota, commencing at 9:05 a.m., Wednesday,  
20 February 6, 2019.

21 \* \* \*

22  
23 C O N F I D E N T I A L

24 ATTORNEYS' EYES ONLY  
25

1 APPEARANCES :

2

3

On Behalf of the Plaintiff:

4

Heather Kliebenstein, Esquire  
MERCHANT & GOULD, P.C.  
3200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2215  
Phone: (612) 332-5300  
e-mail: hkliebenstein@merchantgould.com

8

9 On Behalf of the Defendants:

10 Leah C. Janus, Esquire  
11 FREDRIKSON & BYRON, P.A.  
200 South Sixth Street  
Suite 4000  
12 Minneapolis, Minnesota 55402-1425  
Phone: (612) 492-7000  
13 e-mail: ljanus@fredlaw.com

14

15 Also Present: James Woodward, Esquire  
16 Vice President, Legal  
Fair Isaac Corporation

17

18 The Videographer: Mr. Scott Breckheimer

19

20

21

22

23

24

25

1 PROCEEDINGS  
2 Whereupon, the video deposition of JANDEEN  
3 BOONE was commenced at 9:05 a.m. as follows:  
4 \* \* \*  
5 THE VIDEOGRAPHER: This is the  
6 videographer speaking, Scott Breckheimer with Depo  
7 International. Today is February 6th in the year  
8 2018 [sic]. The time is 9:05 a.m. We are at 80  
9 South Eighth Street, Suite 3200, Minneapolis,  
10 Minnesota 55402, to take the video deposition of  
11 Jandeen Boone in the matter of, excuse me, Fair  
12 Isaac Corporation versus Federal Insurance Company,  
13 et al.  
14 Will counsel please introduce  
15 themselves for the record?  
16 MS. KLIEBENSTEIN: Heather Kliebenstein  
17 and Jim Woodward on behalf of the Plaintiffs.  
18 MS. JANUS: Leah Janus on behalf of  
19 the Defendants.  
20 THE VIDEOGRAPHER: Will the court  
21 reporter please administer the oath?  
22 \* \* \*  
23 (Reporter's Note: The oath was  
24 administered by the court reporter.)  
25 MS. BOONE: I do.

Page 3

1 THE VIDEOGRAPHER: You may begin.  
2 MS. JANUS: Thank you.  
3 \* \* \*  
4 JANDEEN BOONE,  
5 after having been first duly sworn,  
6 deposes and says under oath as follows:  
7 \*\*\*  
8 EXAMINATION  
9 BY MS. JANUS:  
10 Q. Good morning.  
11 A. Good morning.  
12 Q. Please state your name.  
13 A. Jandeen Boone.  
14 Q. What is your address?  
15 A. 409 Reflection Road, Apple Valley,  
16 Minnesota 55124.  
17 Q. Thank you, Ms. Boone. My name is Leah  
18 Janus. I represent the defendants in this lawsuit.  
19 We haven't met before today, correct?  
20 A. Correct.  
21 Q. My understanding is that you're being  
22 represented by counsel for the plaintiffs here  
23 today; is that correct?  
24 A. Yes.  
25 Q. Have you had your deposition taken

Page 4

1 before?  
2 A. Yes.  
3 Q. Okay. You're probably familiar with  
4 the ground rules, but just so that we are on the  
5 same page, I'll ask you questions, you're here to  
6 provide answers. You understand that you're under  
7 oath today, providing testimony as if you were in a  
8 court of law, correct?  
9 A. Yes.  
10 Q. Okay. If you don't understand a  
11 question, please feel free to ask me to clarify or  
12 rephrase. Okay?  
13 A. Okay.  
14 Q. If you don't do that, I'll assume you  
15 understood the question, fair?  
16 A. That's fair.  
17 Q. Okay. And you're doing a fine job of  
18 this already, but words and oral responses are  
19 required rather than gestures or nods of the head,  
20 that type of thing. Okay?  
21 A. Okay.  
22 Q. Okay. Ms. Boone, where are you  
23 employed?  
24 A. Ecolab, Incorporated.  
25 Q. And what is your position?

Page 5

1 A. Associate General Counsel for the  
2 Institutional Business.  
3 Q. How long have you been at Ecolab?  
4 A. Just shy of four years.  
5 Q. So you started there in 2015, 2014?  
6 A. February of 2015.  
7 Q. Where were you before Ecolab?  
8 A. Pentair.  
9 Q. And what were the approximate dates of  
10 your employment with Pentair?  
11 A. January 2009 through January of 2015.  
12 Q. Prior to -- And what was your position  
13 at Pentair?  
14 A. Associate General Counsel for the  
15 Filtration Business Unit.  
16 Q. Prior to Pentair, what was your  
17 employment?  
18 A. It was a company called MGI Pharma.  
19 Q. What was your position with MGI Pharma?  
20 A. I think my title was Associate General  
21 Counsel.  
22 Q. What were the approximate dates of  
23 your employment with MGI Pharma?  
24 A. 2007 -- November of 2007 until January  
25 of 2009.

Page 6

<p>1 MS. JANUS: I didn't specify. I'm  2 just asking the question.  3 MS. KLIEBENSTEIN: Okay. I'll just  4 object as vague, then.  5 THE WITNESS: Well, the client, which  6 is Chubb &amp; Son, a division of Federal Insurance  7 Company, has a right to use the Fair Isaac products  8 subject to the terms and conditions and limitations  9 of the agreement, which would include use so long  10 as the Fair Isaac products are installed and the  11 physical location is within the United States, and,  12 then, the additional limits that are in the  13 Exhibit A, which is the chart outlining the seats  14 and application limitations.  15 BY MS. JANUS:  16 Q. And Exhibit A does not contain any  17 additional territorial limitations on the scope,  18 correct?  19 MS. KLIEBENSTEIN: Are you in  20 Exhibit A of the main agreement?  21 MS. JANUS: Yes.  22 MS. KLIEBENSTEIN: Okay.  23 THE WITNESS: There is no additional  24 territorially -- territorial limitation in  25 Exhibit A, other than that it's subject to the</p> <p style="text-align: right;">Page 119</p>	<p>1 Enterprise License Agreement, is use of Blaze  2 outside of the United States allowed?  3 MS. KLIEBENSTEIN: Objection, vague as  4 to time.  5 THE WITNESS: My interpretation would  6 be taking the agreement, Amendment One and  7 Amendment Two collectively as the software license  8 would be that after Amendment Two was signed,  9 Chubb &amp; Sons, a division of Federal Insurance, along  10 with its affiliates, which, again, is a defined  11 term, entities that are controlled by Chubb &amp; Son,  12 a division, are allowed to use the Fair Isaac  13 products so long as they are installed and the  14 physical location is within the United States.  15 BY MS. JANUS:  16 Q. So, in your view, there's no  17 geographical limitation for the use of Blaze?  18 <b>A. For the use, no. For the installation  19 and the physical location, yes. It has to be here  20 in the United States.</b>  21 Q. And do you know whether use of Blaze  22 in a country outside of the United States is  23 possible without installation also occurring  24 outside of the United States?  25 MS. KLIEBENSTEIN: Objection,</p> <p style="text-align: right;">Page 121</p>
<p>1 terms and conditions of the agreement, which has a  2 territory restriction.  3 BY MS. JANUS:  4 Q. So based on your interpretation of the  5 license agreement, is use out -- use of Blaze by  6 Chubb outside of the United States allowed?  7 MS. KLIEBENSTEIN: Objection, vague as  8 to -- as to time and entity.  9 BY MS. JANUS:  10 Q. At the time that agreement was entered  11 into and became enterprise-wide, was use by Chubb  12 of Blaze outside of the United States allowed?  13 MS. KLIEBENSTEIN: Objection, vague.  14 THE WITNESS: Yeah. I mean, I think  15 that's multiple questions. So the original license  16 grant is only to Chubb &amp; Son, a division of Federal  17 Insurance Company. It's not until Amendment Two  18 where we get to an enterprise-wide license.  19 BY MS. JANUS:  20 Q. Okay. So let's take the software  21 license agreement, Amendment One and Amendment Two  22 all together as comprising together the Enterprise  23 License Agreement. Is that fair?  24 <b>A. Okay.</b>  25 Q. Under your interpretation of the</p> <p style="text-align: right;">Page 120</p>	<p>1 speculation.  2 THE WITNESS: Yeah. I don't know.  3 BY MS. JANUS:  4 Q. What do you base your conclusion that  5 the installation must be -- and, I'm sorry,  6 installation and physical location must be within  7 the United States upon?  8 <b>A. Because that's how Territory is  9 defined, which is a part of the License Grant --  10 excuse me. Again, in 2.1, which is the License  11 Grant, it says it's "Subject to the terms,  12 conditions and limitations of this Agreement."  13 The installation and physical location  14 of the products has to be in the United States of  15 America. That would be a term, condition or  16 limitation of the agreement that would apply to the  17 License Grant.</b>  18 Q. Is there anything else in the license  19 agreement that you believe supports your  20 interpretation of the territorial restriction as  21 you've described it?  22 <b>A. Well, I haven't read the entire  23 agreement or the two amendments, but the provisions  24 you've asked me to look at, I haven't read anything  25 that ever expands the definition of Territory. So</b></p> <p style="text-align: right;">Page 122</p>

1 **I've no reason to believe it was ever expanded**  
2 **outside of having installation and physical**  
3 **location in the United States.**  
4 Q. And my question really is, do you  
5 believe, you know, based on your experience working  
6 with these types of agreements and this agreement  
7 specifically, that there are any other provisions  
8 of the agreement that are relevant to the analysis  
9 of what the territorial scope of the license is?  
10 **A. Well, again, I mean, I haven't read**  
11 **the entire license. So I don't know if there's**  
12 **anything else in here referencing Territory or not.**  
13 **So I don't know.**  
14 Q. Okay.  
15 **A. I'm not sure that it's necessary for**  
16 **there to be any other reference.**  
17 Q. Why don't you just take a look through  
18 the document and let me know if you believe there  
19 are other provisions that are relevant to the  
20 territorial scope of the license?  
21 (Reporter's Note: The witness is  
22 reviewing Exhibit No. 314 for approximately two  
23 minutes.)  
24 THE WITNESS: I mean, I would say  
25 section 3.6, which is Use by Third Party. It

Page 123

1 doesn't specifically reference the word Territory,  
2 but it does say that ACS Commercial Solutions,  
3 which is Client's information technology  
4 infrastructure operations have been outsourced to  
5 ACS Commercial, and they're -- I mean, Fair Isaac  
6 is granting ACS the right to use the Fair Isaac  
7 products "provided that such use is otherwise  
8 subject to the terms and conditions of this  
9 Agreement and does not exceed the limitations on  
10 use and other restrictions set forth herein."  
11 So I would say the territory  
12 restriction is also a part of that provision because  
13 it's subject -- their use, ACS's use is subject to  
14 the terms and conditions of the agreement.  
15 MS. JANUS: Okay.  
16 (Reporter's Note: The witness is  
17 reviewing Exhibit No. 314 for approximately three  
18 minutes.)  
19 THE WITNESS: So -- and we already  
20 talked about Amendment One and Amendment Two, which  
21 are subject to the terms and conditions of the  
22 agreement. So the territory restriction would  
23 still apply in those amendments.  
24 BY MS. JANUS:  
25 Q. Based on the language we looked at in

Page 124

1 the first paragraph and at least in Amendment Two,  
2 paragraph 3, was your previous testimony, correct?  
3 **A. Yes, and in Amendment One it's also in**  
4 **paragraph 3.**  
5 Q. Okay. Anything else?  
6 **A. No.**  
7 Q. With respect to Amendment Two, this  
8 was entered into in late December 2006, correct?  
9 **A. Yes.**  
10 Q. And your testimony was that you can't  
11 recall being involved in the negotiation of it, but  
12 you saw the stamp that you, you know, were involved  
13 at some level in it, correct?  
14 **A. Yes.**  
15 Q. Were you aware that Amendment Two was  
16 the subject of negotiations between the business  
17 people at FICO and the business people at Chubb?  
18 **A. No.**  
19 Q. Were you a part of any of those  
20 negotiations as far as you can recall?  
21 **A. Not that I recall, no.**  
22 Q. Do you recall any conversations with  
23 anyone at Chubb relating to the terms of Amendment  
24 Two?  
25 **A. No.**

Page 125

1 Q. Do you recall any conversations with  
2 anyone at Chubb relating to any aspect of the  
3 license agreement?  
4 **A. No.**  
5 Q. Is it possible that Tom Carretta was  
6 involved from the legal side of things at FICO in  
7 the negotiation of Amendment Two?  
8 **A. I don't know.**  
9 Q. Take a look back at 310, and if you  
10 look at page 3 of 16 again, in the first -- line 16,  
11 line 17, line 15, those are -- appear to be e-mails  
12 dated December 21, 2006, that are to or from  
13 Carretta, correct?  
14 **A. Yes.**  
15 Q. Does that indicate to you that Carretta  
16 was involved in the negotiation of Amendment Two?  
17 **A. Um, the -- I mean, I don't recall what**  
18 **his involvement would have been, but in the To line**  
19 **where it's talking about a Contracts Committee, I**  
20 **don't recall for certain, but we had a Contracts**  
21 **Committee -- I don't know if this is -- if --**  
22 MS. KLIEBENSTEIN: I'll jump in here  
23 and -- and caution you, this is a -- this is a  
24 privilege log. If what you're going to say about  
25 the Contracts Committee is going to reveal

Page 126